

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHEMOIL CORPORATION,

Plaintiff,

v.

M/V DARYA VISHNU, its engines,  
tackle and apparel,

Defendant *IN REM*.

CASE NO. C13-5494 RBL

ORDER GRANTING MOTION TO  
DISMISS COUNTERCLAIM

[Dkt. #28]

**I. INTRODUCTION**

THIS MATTER is before the Court on Plaintiff Chemoil Corporation's Motion to Dismiss Defendant *in rem* M/V Darya Vishnu's counterclaim for wrongful arrest [Dkt. #28]. Chemoil supplied the Darya Vishnu with \$582,556.65 worth of bunker fuel, which has not been paid for. When the balance became overdue, Chemoil obtained a warrant to arrest the vessel while it was harbored in Longview, Washington. Although no arrest was made because Vishnu Shipping Limited ("Vishnu"), the vessel owner, posted a bond with the Court, Vishnu claims it was wrongfully arrested because Chemoil did not have a maritime lien and a non-U.S. Marshall was deputized to serve the arrest warrant. Chemoil argues that the counterclaim should be

1 dismissed because it fails to allege facts showing it acted in bad faith. For the following  
2 reasons, Chemoil's Motion to Dismiss the Counterclaim is **GRANTED**.

## 3 **II. BACKGROUND**

4 In April 2013, STX Corporation sought to purchase fuel for the Darya Vishnu, a tanker it  
5 was chartering. On April 4, 2013, it sent an order to Chemoil Corporation's Korea office to  
6 purchase bunker fuel that would be delivered to the Darya Vishnu in Panama. The order  
7 specified that the sellers' terms and conditions would not apply to the order. The next day,  
8 Chemoil emailed STX Corporation an Order Confirmation detailing the purchase. It listed  
9 Chemoil Corporation as the seller, STX Corporation as the buyer, and the Darya Vishnu as the  
10 ship. It also included Chemoil's Sales Terms and a link to Chemoil's General Terms and  
11 Conditions. The Terms and Conditions included a clause that the fuels delivered by Chemoil  
12 were being "sold and delivered on the financial credit of the vessel being supplied" and the  
13 promise of the buyer to pay. [Dkt. #1, Ex. C]. It noted that Chemoil "shall have the right to  
14 assert a maritime lien, attachment, or claim against the Vessel" should the buyer fail to pay.  
15 [Id.]. The Terms and Conditions specified that the buyer should notify Chemoil if the creation of  
16 a maritime lien on the vessel was prohibited through another contract, such as a charter  
17 agreement, and that such a prohibition would require upfront payment for the fuel. [Id.].  
18 Chemoil required the buyer to give notice of a no-lien provision within 24 hours of receipt of the  
19 Order of Confirmation. [Dkt. #1, Ex. B].

20 On April 19, 2013, the Darya Vishnu arrived in Panama to refuel. Vishnu alleges that,  
21 prior to receiving the fuel, the master of the Darya Vishnu presented the bunker supplier with a  
22 letter indicating that Chemoil Corporation did not have a maritime lien over the vessel because  
23 Vishnu's charter agreement with STX Corporation prohibited any such liens. Chemoil Latin  
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1 America, Inc. (a separate legal entity from Chemoil Corporation) proceeded to supply the fuel to  
2 the vessel, and the Darya Vishnu left port the next day.

3 On June 18, 2013, two months after the Darya Vishnu received the fuel and one month  
4 after payment was due, counsel for Chemoil notified STX Corporation and Vishnu that payment  
5 for the fuel was overdue. [Dkt. #1, Ex. G]. The notice said that if Chemoil did not receive  
6 payment immediately, it would seek to arrest the Darya Vishnu at its next arrival at Longview,  
7 Washington. Counsel for Vishnu responded to the email, pointing to the “no-lien” letter supplied  
8 to Chemoil Latin America, saying that STX Corporation was responsible for payment and that  
9 any arrest of the Darya Vishnu would be wrongful. [*Id.*]. Chemoil did not receive payment for  
10 the fuel.

11 On June 20, 2013, Chemoil sought an arrest warrant from the Court, which the Court  
12 issued the same day. [Dkt. #10]. The next day, after receiving word from the U.S. Marshal’s  
13 Office that it would be unable to serve the warrant for arrest due to being understaffed, Chemoil  
14 filed a motion to deputize James W. Scheel, a Portland, Oregon, legal process server, as a U.S.  
15 Marshal for the sole purpose of serving the arrest warrant on the Darya Vishnu. After speaking  
16 with the U.S. Marshal’s Office, the Court granted the motion. [Dkt. #17]. Before the arrest  
17 warrant could be served, Vishnu’s protection and indemnity insurer provided Chemoil with a  
18 Letter of Undertaking, through which the vessel owners agreed to post security by way of a  
19 surety bond in the amount of \$614,412.31.<sup>1</sup> The bond was filed with the Court, and the vessel  
20 was never arrested. [Dkt. #21].

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24 <sup>1</sup> This figure includes the cost of the fuel plus interest and other costs.

1 In its Answer [Dkt. #24], Vishnu asserted a counterclaim for wrongful arrest. It argues  
 2 that Chemoil wrongfully secured an order from the Court for the arrest of the vessel with full  
 3 knowledge that it did not have a maritime lien on the vessel. The basis for this claim is the letter  
 4 it alleges it supplied to the bunker supplier in Panama. It also argues that Chemoil wrongfully  
 5 secured a Court order for the arrest of the vessel when it had knowledge that a non-U.S. Marshal  
 6 would be serving the arrest warrant, because only a U.S. Marshal is authorized to arrest a vessel  
 7 under Fed. R. Civ. P., Supp. Admiralty R. C(3)(b)(i).

8 Chemoil seeks dismissal of the counterclaim, arguing that none of its actions were taken  
 9 in bad faith, with malice, or with gross negligence (a requirement for a wrongful arrest claim),  
 10 and that it had no knowledge of the letter until counsel for Vishnu provided it in June 2013.

### 11 **III. DISCUSSION**

#### 12 **A. Motion to Dismiss Standard**

13 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal  
 14 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
 15 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must allege facts to state  
 16 a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct.  
 17 1937, 1949 (2009). A claim has “facial plausibility” when the party seeking relief “pleads  
 18 factual content that allows the court to draw the reasonable inference that the defendant is liable  
 19 for the misconduct alleged.” *Id.* Although the Court must accept as true the Complaint’s well-  
 20 pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise  
 21 proper Rule 12(b)(6) motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007);  
 22 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation  
 23 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,  
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1 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations  
 2 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,  
 3 550 U.S. 544, 555 (2007) (citations and footnote omitted). This requires a plaintiff to plead  
 4 “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S. Ct. at  
 5 1949 (citing *Twombly*).

### 6 **B. Wrongful Arrest**

7 “The arrest of a vessel in admiralty is an inconvenience to which the owners must submit  
 8 as one caused by the exercise of a legal right on the part of the plaintiff.” *Stevens v. F/V Bonnie*  
 9 *Doon*, 655 F.2d 206, 209 (9th Cir. 1981) (citations omitted). To recover damages for a wrongful  
 10 arrest, the attachment must be by bad faith, malice, or gross negligence. *Id.*; *Frontera Fruit Co.*  
 11 *v. Dowling*, 91 F.2d 293, 297 (5th Cir. 1937) (“The gravamen of the right to recover damages for  
 12 wrongful seizure or detention of vessels is the bad faith, malice, or gross negligence of the  
 13 offending party.”). The law of wrongful arrest has been analogized to that of malicious  
 14 prosecution:

15 Where citizens reasonably disagree concerning their rights,  
 16 powers, and privileges, the doors should be kept open for an  
 17 orderly determination of their differences. [T]he advice of  
 18 competent counsel, honestly sought and acted upon in good faith is  
 alone a complete defense to an action for malicious prosecution.  
 The same principle controls [in cases alleging wrongful arrest of a  
 vessel.]

19 *Frontera Fruit Co.*, 91 F.2d at 297. Absent a finding that Chemoil had the Darya Vishnu  
 20 arrested in bad faith, with malice, or with gross negligence, the claim for wrongful arrest cannot  
 21 stand.

22 Vishnu has failed to allege facts showing that Chemoil acted in bad faith, with malice, or  
 23 with gross negligence either in obtaining an arrest warrant for the Darya Vishnu or in obtaining  
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1 an Order from this Court deputizing a private legal process server to serve the arrest warrant.  
2 STX Corporation ordered fuel from Chemoil Corporation, which Chemoil Latin America  
3 supplied to the Darya Vishnu in Panama. Two months later, Chemoil had not been paid. As a  
4 means to procure payment, Chemoil approached this Court to obtain a warrant to arrest the very  
5 vessel it had supplied with the fuel in Panama. The parties do not dispute that the Darya Vishnu  
6 received nearly \$600,000 of fuel from Chemoil or that the fuel has not been paid for. The only  
7 dispute is whether Chemoil in fact had a maritime lien on the Darya Vishnu (and thus the right to  
8 obtain an arrest warrant). Chemoil's honest belief that it had a maritime lien over the vessel that  
9 it supplied the fuel to does not amount to bad faith, malice, or gross negligence, even if that  
10 belief turns out to be incorrect.

11 Vishnu's arguments are not persuasive. It argues that Chemoil was not a party to the  
12 underlying transaction of the sale and purchase of fuel, yet the Order Confirmation and Invoice  
13 both list Chemoil Corporation as the seller. [Dkt. #1, Exs. B, F]. It argues that Chemoil *knew* it  
14 did not have a maritime lien on the vessel because the master of the Darya Vishnu gave Chemoil  
15 Latin America a letter saying as much just before the fuel was bunkered on the vessel. The  
16 parties disagree as to whether giving the letter to Chemoil Latin America—a separate legal  
17 entity—could put Chemoil Corporation on notice. But even if it could, Chemoil Corporation  
18 asserts that this letter does not constitute notice under the Chemoil Terms and Conditions, which  
19 it contends governs this fuel purchase. Under the Chemoil Terms, Chemoil requires that the fuel  
20 be paid for in advance if there is a no-lien clause placed on the vessel from a charterer. [Dkt. #1,  
21 Ex. C]. Notice of a no-lien clause is required by the buyer within 24 hours of receiving the order  
22 confirmation. [Dkt. #1, Ex. B]. This is a practical requirement, as Chemoil does not want  
23 unpaid fuel sailing away from port without any means to recover its cost. Perhaps Chemoil erred  
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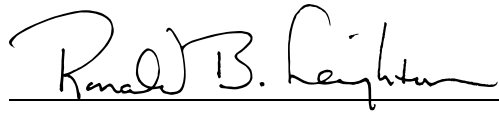
1 this time, and its Terms and Conditions do not apply to this contract. Perhaps STX Corporation  
2 and the Darya Vishnu left Panama with unpaid and unsecured fuel. But this is precisely the  
3 dispute, and it is not bad faith for Chemoil to seek to procure payment through a maritime lien it  
4 honestly believes it possesses.

5 Chemoil also did not act in bad faith, with malice, or with gross negligence when it  
6 obtained an Order from this Court deputizing a private legal process server to arrest the vessel.  
7 For one, the vessel was never arrested, as Vishnu agreed to post a bond with the Court as a  
8 means to keep the vessel on schedule. But more specifically, that the Court issued the Order  
9 cannot be construed as bad faith on the part of the party who brought the motion. The U.S.  
10 Marshals Office informed Chemoil and the Court that it would be unable to serve the warrant  
11 due to a staff shortage. Rather than deprive Chemoil of its alleged right to have the vessel  
12 arrested, the Court fashioned a practical solution to the problem caused by the U.S. Marshals'  
13 unavailability. Similar solutions have been fashioned in other times of U.S. Marshals'  
14 unavailability. *Willamette Production Credit Ass'n v. Staffenson*, No. 84-736-RE, 1984 WL  
15 1793 (D. Or. October 4, 1984); Dkt. #36, Reply at 12, Order, *Trans-Tec Services, Inc. v. M/V*  
16 *CELESTINA*, 1:01-cv-02819, ECF No. 8 (granting substitute process ten days after the  
17 September 11, 2001 terrorist attacks). Because Vishnu has failed to plead facts showing that  
18 Chemoil acted in bad faith, with malice, or with gross negligence, Chemoil's Motion to Dismiss  
19 is GRANTED.

IV. CONCLUSION

Chemoil's Motion to Dismiss the counterclaim [Dkt. #28] is **GRANTED**. Vishnu's counterclaim is **DISMISSED WITH PREJUDICE**.

Dated this 5<sup>th</sup> day of December, 2013.

A handwritten signature in black ink, reading "Ronald B. Leighton", written over a horizontal line.

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE